

SECOND NOTICE OF COMMENT PERIOD

LSA Document #16-4

INTERFERENCE OF A PUBLICLY OWNED TREATMENT WORKS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [327 IAC 5-17-11](#) concerning the definition of "interference" as it relates to pretreatment discharge to a publicly owned treatment works (POTW). IDEM seeks comment on the affected citation listed and any other provisions of Title 327 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: January 13, 2016, Indiana Register (DIN: [20160113-IR-327160004FNA](#)).

CITATIONS AFFECTED: [327 IAC 5-17-11](#).

AUTHORITY: [IC 13-14-8-5](#); [IC 13-14-9](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

[IC 13-14-8-5](#) allows any person meeting the statutory requirements to present a written proposal to the Environmental Rules Board (board) requesting adoption, amendment, or repeal of a rule. A written proposal for the amendment of [327 IAC 5-17-11](#), the definition of "interference" as it regards pretreatment discharge of wastewater into a POTW, was presented to the board at its meeting in January 2015. The proposal and its supporters alleged that the definition at [327 IAC 5-17-11](#) is more stringent than the federal definition at 40 CFR 403.3(k) and that the state's definition creates vagueness and subjectivity in determining whether interference has occurred at the POTW. The board held a hearing on the proposal and considered it at several board meetings after the initial presentation. The board's final action at its October 2015 meeting was to direct IDEM to conduct rulemaking to revise the definition at [327 IAC 5-17-11](#) to be consistent with the federal definition. IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 327 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

The proposal before the board stated that the existing definition of "interference" is more stringent than the federal definition. Amending the state definition to be consistent with the federal definition would mean a lessening of potential fiscal impact. It is not possible to measure reduction of fiscal impact in the absence of an interference occurrence. A goal of the pretreatment program rules is to provide dischargers with the regulatory guidance to avoid violations such as interference.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel at (317) 232-8635 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from January 13, 2016, through February 12, 2016, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received a comment letter from the following party by the comment period deadline:

CWA Authority, Inc., owner of the Indianapolis wastewater collection and treatment system (CWA)

The following is a summary of the comments received and IDEM's responses thereto:

Comment: CWA Authority does not believe that to conform the state rule regarding the definition of "interference" to the federal rule would compromise the ability of a pretreatment program to protect both the collection system and the wastewater treatment plant through actions against industrial users or the ability of IDEM to protect water quality. The existing state definition of "interference" at [327 IAC 5-17-11](#) is more restrictive than the federal definition at 40 CFR 403.3(k) and creates implementation challenges and uncertainty for the CWA Authority and industrial users. (CWA)

Response: In accordance with the direction of the board, IDEM has initiated this rulemaking to make the state rule definition of "interference" consistent with the federal definition.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #16-4 Definition of Interference
MaryAnn Stevens
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

(3) By electronic mail to mstevens@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than May 13, 2016. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [327 IAC 5-17-11](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 5-17-11](#) "Interference" defined

Authority: [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-2](#); [IC 13-18-3](#)

Affected: [IC 13-11-2](#); [IC 13-13-5-1](#); [IC 13-18-4](#)

Sec. 11. (a) "Interference" means a discharge that, alone or in conjunction with a discharge or discharges from other sources, ~~does one (1) of the following:~~ (1) inhibits or disrupts the: POTW, its

(1) treatment processes or operations; its

(2) sludge processes; or its

(3) selected sludge:

(A) use; or

(B) disposal methods;

of a POTW.

(b) The inhibition or disruption under subsection (a) must:

~~(2) Causes~~ (1) **cause** a violation of any a requirement of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation; or

~~(3) Prevents~~ (2) **prevent** the use of the POTW's sewage sludge or its sludge disposal method selected in compliance with the following statutory provisions, regulations, or permits issued thereunder or more stringent state or local regulations:

(A) Section 405 of the Clean Water Act (33 U.S.C. 1345).

(B) The Solid Waste Disposal Act (SWDA) (42 U.S.C. 6901), including:

(i) Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA); and

(ii) the rules contained in any a state sludge management plan prepared pursuant to Subtitle D of the SWDA (42 U.S.C. 6941).

(C) The Clean Air Act (42 U.S.C. 7401).

(D) The Toxic Substances Control Act (15 U.S.C. 2601).

(Water Pollution Control Division; [327 IAC 5-17-11](#); filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)

[Notice of Public Hearing](#)

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